IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Ram Narain Vs. Board of Revenue for Rajasthan Ajmer & Others
(SB Civil Writ Petition No.452/1999)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: October 04, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. R.K.Goyal, for the petitioner.

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.
Mr. Sanjay Mehrishi, for respondents.

BY THE COURT:

The petitioner has approached this court challenging the judgment rendered by the Board of Revenue on February 18, 1998.

2. Contextual facts depict that one Mitthan Lal, predecessor in interest of respondents No.5to22 (for short `plaintiffs') filed a revenue suit under sections 88, 180B and 183 of the Rajasthan Tenancy Act,1955 (for short `1955 Act') against the petitioner (for short `defendant') in the court of Assistant Collector Badi District Dholpur with the averments that the land in dispute bearing khasra No.506 measuring 1 bigha and 12 biswas situated in village Mau Gulavali Tehsil Badi was in the khatedari of Pyare Lal. According to pedigree Ram Lal had three sons Chhotelal, Mitthan Lal and Pyare Lal. Pyare Lal died issueless. Pyare Lal gave land in question to Ram

Narain for a period of one year in Svt.2018 and he continued to cultivate the land with the permission of Pyare Lal. After the death of Pyare Lal in Svt.2032 the plaintiffs asked the defendant to give share in the crop. Since the defendant refused to give any share the suit was filed. The defendant filed written statement and claimed that the land in dispute was of late Pyare Lal from whom he purchased the same in consideration of Rs.1000/- on July 1, 1961. After the sale of land the possession was also handed over to defendant. During the course of settlement operations, the entries in revenue records were made in this regard with the approval of Pyare Lal. Therefore he prayed to dismiss the suit. The trial court after framing six issues and hearing the parties dismissed the suit vide judgment dated May 9, 1985. Plaintiffs first appeal was also dismissed by the Revenue Appellate Authority Bharatpur on January 17, 1992. The second appeal preferred by the plaintiffs before the Board of Revenue was allowed on February 18, 1998 and suit of plaintiffs was decreed. Against this finding of Board of Revenue that the instant writ petition has been filed by the defendant.

3. Learned counsel for the petitioner contended that concurrent finding of fact arrived at by the two courts below could not have been interfered with by the Board of Revenue. It is further contended that even if defendant is held shikmi kashtkar then also in Svt.2018 the land in dispute came in cultivatory possession of defendant till Svt.2033. Since the status of the defendant was not challenged, the defendant by operation of law became khatedar of land in dispute. The suit was filed in 1976, whereas the defendant came into uninterrupted possession of the land in 1961 and because of adverse possession of the defendant over the land, the suit was barred by limitation. Per contra, learned counsel for the plaintiffs supported

the findings of Board of Revenue and placed reliance on Jodha Vs. Board of Revenue (1979 RRD 160).

4. I have pondered over the submissions and scanned the record.

5. Second appeal under section 224(2) of 1955 Act could be filed under the following circumstances:-

(i) decision being contrary to law or the usage having force of law;
(ii) decision having failed to determine some material issue of law or usage the force of law;
(iii) a substantial error or defect in the procedure provided by or under this Act or by any other law for the time being in force, which may possibly have produced produced an error or defect in the decision of the case upon the merit; and
(iv) the decision being contrary to the weight of evidence on record where the lower appellate court has varied or reversed any finding of the trial court on a question of fact.

6. In the instant matter the Sub Divisional Officer (SDO) and Revenue Appellate Authority (RAA) concurrently held that the defendant was in continuous possession of the land after Svt.2018 and since no challenge was made to the adverse possession for more than 12 years the plaintiffs' suit was liable to be dismissed. The Board of Revenue (Board) in the impugned judgment however held that the defendant was not a trespasser and could not have based his claim on adverse possession. The unregistered sale deed executed by late Pyare Lal did not have any significance for

considering transfer of title in favour of the defendant. The defendant was `Shikmi Kashtkar' and suit under section 180(1)(b) of 1955 Act was maintainable. The Board interfered in the matter on the ground that SDO and RAA had erred in considering the legal position.

7. In Jodha Vs. Board of Revenue (supra) the Division Bench of this Court indicated as under:- (Para 7)

> "Thus, even if we may not agree with the Board of Revenue that the petitioners became trespassers after the expiry of the term of their sub-lease and they were liable to be ejected under section 183 of the Act, yet if the possession of the petitioners is considered to be as sub-tenants holding over from year to year, then a suit for ejectment under section 180(1)(b) could be filed against them and a decree for ejectment passed by the Revenue Courts cannot be interfered with by this Court."

8. Having considered entire facts and circumstances of the case, I do not find it a fit case where interference under Article 227 is called for. In Sadhana Lodh Vs. National Insurance Co. Ltd. (2003)3 SCC 524 their Lordships of the Supreme Court observed thus:-

> "The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

9. For these reasons, I find no merit in this writ petition and the same stands accordingly dismissed. No costs.

(Shiv Kumar Sharma)J.

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